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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,883	06/27/2003	Thomas J. Harris	20020331.ORI	7224
23595	7590	03/29/2005	EXAMINER	
NIKOLAI & MERSEREAU, P.A.			SOOHOO, TONY GLEN	
900 SECOND AVENUE SOUTH			ART UNIT	PAPER NUMBER
SUITE 820			1723	
MINNEAPOLIS, MN 55402				

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/607,883

Applicant(s)

HARRIS ET AL.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-12, 14 and 17-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-12, 14 and 17-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date .
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 2-12, 14, 17-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails to limit and describe the vessel as a "marine" vessel.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2-5, 7, 11-12, 14, 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doherty 4792234 in view of Malan 3845631.

With regards to the preamble “a marine vessel mounted [device]” such as recitation is directed to the function environment of the concrete mixing and delivery system. And has been afforded little patentable distinction to a “marine” function.

Doherty teaches a concrete mixing and delivery system which is mounted upon a moveable frame 20, 32, 30 which is capable to be functionally mounted on any surface, including that of a ship, barge, roadway, trailer, which includes:

- a) two opposed rotary mixing drums 78, 78 and
- b) a common conveyor 66, 98 which elevates the material which may be dumped to a location at 160 away off of the frame.

Doherty also teaches a control system 184 which may control any of the operation of the elements of the device.

The reference teaches a rotating discharge diverting chute 82 which is selectively connectable to the each drum 78, 78 by pivoting along 152 to the mouth 146 of a drum; a collection pan 70, 95, 96, 124,, located above the conveyor belt 66, 98, a water supply storage tank 154.

With regards to claim 7 the operation of the chute system “being capable” is functional in recitation and has not been provided patentable distinction to the claim.

Doherty discloses all of the recited subject matter as defined within the scope of the claims with the exception of having the mixer/delivery system attached upon a vessel in particular a barge vessel (claim14).

The Malan reference discloses that a floating platform 18 may be provided with a cement mixer plant with a mixer 27 (particular type unstated) and with a discharge chute

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28 feeding concrete conveyor 35, 40, 45, and also may feed into optionally a spout 43, fig 3. so that on provide the capability to form cement material offshore to be dispensed off the floating vessel.

In view of the teaching of Malan and Paterson that one may place the concrete plant on a floating vessel and configure the dispensing conveyors to dispense off the vessel, it is deemed that it would have been obvious to one of ordinary skill in the art to place the system of Doherty upon a floating vessel, or barge so as to provide a manner to make cement upon the water surface and to easily place cement along the water shoreline.

With regards to claims 18-19, the use of propulsion systems upon a floating platform is old and well known, in order to provide a means to move the floating platform to a desired location in the water. Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the device as modified above with a propulsion system upon the frame so as to easily move the platform from one location in the water to another location.

With regards to the manner of the drums are off loaded, absent any unexpected results in the sequence of drum discharge, such an operation is deemed that it would have been obvious to one of ordinary skill in the art to optimize discharge rate of each the drums so that production of the material is optimized.

5. Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doherty 4792234 in view of Malan 3845631 as applied to claim 2 above, and further in view of Farrell 2319807.

With regards to claims 7 and 9 Doherty as modified above discloses all of the recited subject matter as defined within the scope of the claims with the exception of having the conveyor includes a 1<sup>st</sup> and 2<sup>nd</sup> conveyor whereby the 2<sup>nd</sup> conveyor is an elevated mechanized output chute.

The reference to Farrell teaches that concrete mixer drum 19, 20 may be conveyed up a conveyor to an elevate discharge chute 67 for a batch discharge.

Also, has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. St. Regis Paper Co. v. Bemis Co., 193 USPQ 8.

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to provide two conveyor systems so that conveyance path is of a more convenient routing, and further provide the second conveyor as a elevated batch discharge chute as the type taught by Farrell, so that the discharge of the cement may be more conveniently discharged in a batch manner.

6. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doherty 4792234 in view of Malan 3845631 and further in view of Farrell 2319807 as applied to claims 7 and 9 above, and further in view of John 5522658.

With regards to claims 8 and 10, Doherty 4792234 in view of Malan 3845631 as applied to claim 2 above, and further in view of Farrell 2319807 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the use of a sump collection to collect gray water for reuse, i.e. recycling the water.

The recycling of water in the cement processing art is old and well known as shown by John 5522658, column 5 lines 5-8, which uses a sump to collect used water in a cement process for reuse thereby providing advantageous environmental consideration and impact.

Accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to provide a sump at the bottom of the collection pan 70, 95, 96, 124 and discharge chute of Doherty so as to collect and recycle any water used in the process so as to reduce unwanted the environmental impact.

### ***Response to Arguments***

7. Applicant's arguments filed 1/26/2005 have been fully considered but they are not persuasive. Applicant argues that the combination of Doherty '631 in view of the teaching of Malan '631 does not show a concrete mixing plant which is designed to operate off shore and furthermore such a modification would destroy the function of the trailer frame plant of Doherty. Applicant further argues that Malan is not a marine vessel of off shore operation in operation of a concrete batching plant.

8. In response, the placement of the frame of the Doherty device upon a floating platform does not inhibit any operation of the mechanical components of the mixing drums, conveyor, or controls. In fact the device of Doherty is designed to be

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transported from one place to another. Such arguments that the placement of upon a waterborne vessel would impair the operation of making and delivering cement by the Doherty device is unpersuasive. In response to the allegation that Malan is not a marine vessel, it appears that Applicant attempts to suggest that the term "marine" is limited to operation upon the high seas, in which the Malan reference does not operate such an environment. It is noted that, at best, the term "marine vessel" is directed to the function of the vessel in water. It has been shown that the Malan reference is capable of floating upon the water surface and within a dam environment. In such an environment, such an operation involves a flowing river of water of a depth of water, thereby it is deemed that there is no structural distinction to that vessel that operates in the ocean or within a river or the offloading of material to a shoreline, river shoreline, or a structure defining a shoreline such as a dam.

The prior art made of record in the previous office action and not relied upon was considered pertinent to applicant's disclosure and was cited as examples of the state of the art whereby it further establishes that it has been known, to a person of ordinary skill in the art of cement plants and vehicle mounted devices, to mount a vehicle upon a barge, or railway car. The examples further show the use of two opposed rotating cement drums, and the use of an elevated discharge chute with a rotating cement mixer drum.

In particular, Paterson 5971600 teaches that a vehicle mounted apparatus may be placed upon a barge, see figure 12. Oberg et al 5605397 teaches the use of two opposed rotating cement drums. Duecy 3367636 teaches the use of an elevated



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discharge chute with an elevated chute 80 with a rotating cement mixer 30. Maxon, Jr 3151849 teaches a cement mixing plant for a barge, or railway car, column 1, lines 57-62.

### ***Conclusion***

9. Applicant's amendment has added the term "marine vessel" and has necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

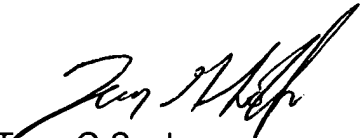
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo  
Primary Examiner  
Art Unit 1723

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